

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DAVID GORDON CANTRELL,

Plaintiff,

V.

ADMINISTRATIVE SUBDIVISION.

Defendant.

Case No. C07-5272 RJB/KLS

**ORDER TO SHOW CAUSE FOR
FAILURE TO STATE A CLAIM**

This civil rights action has been referred to United States Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Plaintiff has been granted leave to proceed *in forma pauperis*. Before the Court for review is Plaintiff's proposed civil rights complaint in which Plaintiff purports to bring a civil rights complaint under 42 U.S.C. § 1983. However, plaintiff has failed to allege any conduct or request relief pursuant to § 1983. The Court finds that Plaintiff must show cause why his complaint should not be dismissed for failure to state a claim.

I. DISCUSSION

Under 42 U.S.C. § 1983, claims can only be brought against people who personally participated in causing the alleged deprivation of a right. *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981). Neither a State nor its officials acting in their official capacities are “persons” under section 1983. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989). Additionally, state agencies, such as the “Bureau of Prisons”, are not “persons” within the meaning of 42 U.S.C. § 1983, and therefore they are not amenable to suit under that statute. *Maldonado v. Harris*, 370 F.3d 945, 951 (9th Cir. 2004), *cert. denied*, 125 S. Ct. 1725 (S. Ct. 1725 (2005) (citing *Will v. Mich. Dep’t of State Police*, 491 U.S. at 70).

In order to state a claim under 42 U.S.C. § 1983, a complaint must allege that (1) the conduct complained of was committed by a person acting under color of state law and that (2) the conduct deprived

1 a person of a right, privilege, or immunity secured by the Constitution or laws of the United States. *Parratt*
 2 *v. Taylor*, 451 U.S. 527, 535 (1981), overruled on other grounds, *Daniels v. Williams*, 474 U.S. 327
 3 (1986). Section 1983 is the appropriate avenue to remedy an alleged wrong only if both of these elements
 4 are present. *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985), cert. denied, 478 U.S. 1020
 5 (1986).

6 Plaintiff must also allege facts showing how individually named defendants caused or personally
 7 participated in causing the harm alleged in the complaint. *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir.
 8 1981). A defendant cannot be held liable under 42 U.S.C. § 1983 solely on the basis of supervisory
 9 responsibility or position. *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 694 n.58
 10 (1978). A theory of *respondeat superior* is not sufficient to state a § 1983 claim. *Padway v. Palches*, 665
 11 F.2d 965 (9th Cir. 1982).

12 Plaintiff names only “Administrative Subdivision” and “Washington State,” but his complaint is
 13 devoid of any explanation of who the “Administrative Subdivision” is or how the named defendants have
 14 harmed him. Plaintiff must set forth facts describing when and where and by whom he was deprived of a
 15 constitutional right. Plaintiff’s complaint must include factual allegations describing how each individual
 16 caused or personally participated in causing him the harm that he claims he suffered.

17 In addition, Plaintiff seeks the immediate issuance of a writ and release from “illegal imprisonment.”
 18 When a person confined by government is challenging the very fact or duration of his physical
 19 imprisonment, and the relief he seeks will determine that he is or was entitled to immediate release or a
 20 speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus. *Preiser v.*
Rodriguez, 411 U.S. 475, 500 (1973). In order to recover damages for an alleged unconstitutional
 22 conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a
 23 conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been
 24 reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to
 25 make such determination, or called into question by a federal court’s issuance of a writ of habeas corpus,
 26 28 U.S.C. § 2254. *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). A claim for damages bearing that
 27 relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983.
 28 *Id.*

1 Thus, when a state prisoner seeks damages in a § 1983 suit, the district court must consider
2 whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or
3 sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the
4 conviction or sentence has already been invalidated. *Id.* If the court concludes that the challenge would
5 necessarily imply the invalidity of the judgment or continuing confinement, then the challenge must be
6 brought as a petition for a writ of habeas corpus, not under § 1983.” *Butterfield v. Bail*, 120 F.3d 1023,
7 1024 (9th Cir.1997) (*quoting Edwards v. Balisok*, 520 U.S. 641 (1997)).

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9 Accordingly, it is **ORDERED**:

10 1. Plaintiff shall show cause why this complaint should not be dismissed. A response is due by
11 **August 31, 2007**. If Plaintiff fails to file a response or the response shows the Plaintiff cannot go forward
12 the court will enter a report and recommendation that the complaint be dismissed.

13 2. The Court Clerk is directed to send a copy of this Order to Plaintiff.

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15 DATED this 27th day of July, 2007.

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19 Karen L. Strombom
20 United States Magistrate Judge
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